

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**FRONTIER COMMUNICATIONS
CORPORATION,**

Respondent,

and

**COMMUNICATIONS WORKERS OF
AMERICA, DISTRICT 2-13,**

Charging Party.

CASE 09-CA-247015

**RESPONDENT’S EXCEPTIONS TO THE
ADMINISTRATIVE LAW JUDGE’S DECISION**

On October 14, 2020, Administrative Law Judge Geoffrey Carter (the “ALJ”) issued a decision (“ALJD”) in the above-captioned case. Therein, the ALJ erroneously concluded that Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act (“NLRA or the “Act”), 29 U.S.C. § 158(a)(5), (1), by “since about July 19, 2019, failing and refusing [to] notify and provide the Union with an opportunity to bargain over the effects of Respondent’s decision to require bargaining unit employees to provide new I–9 forms and supporting documentation” and by “since August 8, 2019, failing and refusing to provide the Union with information in response to the Union’s written request for the specific deficiencies in each bargaining unit member’s previously completed I–9 form and the current location and storage method for bargaining unit members’ previously completed I–9 forms and any accompanying documents”. ALJD at 23:3-12.

Frontier hereby submits the following exceptions, supported by a contemporaneously filed brief, pursuant to Section 102.46(a) of the Rules and Regulations of the National Labor

Relations Board (“NLRB” or the “Board”). The Board should sustain these exceptions, reverse the ALJ as appropriate, issue a decision concluding that the record evidence does not establish that Respondent has engaged in any of the unfair labor practices alleged, and issue an order dismissing the underlying unfair labor practice complaint.

1. Respondent excepts to the ALJ’s Conclusion of Law No. 3, at 23:3-6, that: “By, since about July 19, 2019, failing and refusing notify and provide the Union with an opportunity to bargain over the effects of Respondent’s decision to require bargaining unit employees to provide new I-9 forms and supporting documentation, Respondent violated Section 8(a)(5) and (1) of the Act.” Respondent did not violate the Act.

2. Respondent excepts to the ALJ’s Conclusion of Law No. 4, at 23:8-12, that, “By, since August 8, 2019, failing and refusing to provide the Union with information in response to the Union’s written request for the specific deficiencies in each bargaining unit member’s previously completed I-9 form and the current location and storage method for bargaining unit members’ previously completed I-9 forms and any accompanying documents, Respondent violated Section 8(a)(5) and (1) of the Act.” Respondent did not violate the Act.

3. Respondent excepts to the ALJ’s Conclusion of Law No. 5, at 23:14-15, that, “The unfair labor practices stated in Conclusions of Law 3 and 4, above, affect commerce within the meaning of Section 2(6) and (7) of the Act.” Respondent did not violate the Act.

4. Respondent excepts to the ALJ’s gratuitous legal conclusion that Respondent’s decision to require bargaining unit employees to provide complete Forms I-9 forms was a mandatory subject of bargaining. ALJD at 18:5-20, 21:4-6; Tr. 61-68.

5. Respondent objects to the ALJ’s failure to find, as a matter of fact, that the Union’s repeated demands to bargain were limited to decisional bargaining, based on its

contention that Respondent was attempting to re-verify its employees' immigration status. Tr. 19:24-20:2, 22:11-2, 54:22, 57:5, 107:5-11; J. Exs. 13, 22, 26.

6. Respondent excepts to the ALJ's conclusion, as contrary to the facts and the law, that Respondent's decision to require bargaining unit employees to provide complete Forms I-9 materially, substantially and significantly affected the terms and conditions of unit employees. Tr. 117:3, 140:22, 181:24-182:5, 201:16; ALJD at 18 n.12.

7. Respondent excepts to the ALJ's repeated conclusions, as contrary to the facts and the law, that it was obligated to bargain with the Union over the effects of Respondent's decision to require bargaining unit employees to provide complete Forms I-9 (the "Compliance Decision"). ALJD at 1, 2:3-5, 3:21-33, 4:27-36, 5 n.6, 5:22-29, 11:11-18, 16:17, 17:5-10, 17 n.11, 18:5-13; Tr. 54:12-22, 83-86, 107:1-11; J. Exs. 17, 19, 22 26.

8. Respondent excepts to the ALJ's failure to find, as a matter of law, that the Compliance Decision was mandated by federal law.

9. Respondent excepts to the ALJ's failure to find, as a matter of fact and law, that the Respondent implemented the Compliance Decision without exercising any discretion. ALJD at 18:10-13, 18 n.12, 19:4-36.

10. Respondent excepts to the ALJ's conclusion, as contrary to the facts and the law, that the Union requested to engage in effects bargaining regarding the Compliance Decision. ALJD at 17:26-18:3, 19:34-36; J. Ex. 17, 19, 22, 26; Tr. 54:12-22, 83-86, 107:1-11.

11. Respondent excepts to the ALJ's failure to make a specific factual finding that the Union requested effects bargaining on a date certain, which Respondent contends is a condition precedent to any such bargaining obligation.

12. Respondent excepts to the ALJ's reliance on the parties' interactions over Forms I-9 in 2013 as establishing any precedent or obligation with respect to the issues litigated in this case. ALJD at 3:21-4:25; 8 n.8; 21:18-23, 22:11-20; R. Ex 1; Tr. 129:1-7, 207:24-208:1, 209:3-13. 210:10-17, 229:7-234:14.

13. In concluding that the Compliance Decision constituted a material, substantial, and significant change from the unit employees' existing terms and conditions, the ALJ disregarded or misapplied Board law, including *Southern California Edison Co.*, 284 NLRB 1205, 1205 fn. 1 (1987), *enfd.* 852 F.2d 572 (9th Cir. 1988) and *Rust Craft Broadcasting*, 225 NLRB 327 (1976).

14. In concluding that the Compliance Decision constituted a material, substantial, and significant change from the unit employees' existing terms and conditions, the ALJ disregarded or misapplied Board law, including *Ruprecht Co.*, 366 NLRB No. 179 (2018) and *Washington Beef, Inc.*, 328 NLRB 612 (1999). ALJD at 18:15-20, 18:27-29, 18:33-19:2, 19:34.

15. Respondent excepts to the ALJ's reliance on hypothetical bargaining topics as evidence of an effects bargaining obligation. ALJD at 18:29-33, 19:29-34.

16. In concluding that Respondent exercised discretion in executing the Compliance Decision, the ALJ disregarded or misapplied Board law, including *Long Island Day Care Services*, 303 NLRB 112 (1991) and *Standard Candy Co.*, 147 NLRB 1070 (1964). ALJD at 19:4-25.

17. Respondent excepts to the ALJ's failure to find, as a matter of law, that Frontier was not obligated to provide the disputed information to the Union because the Company had no underlying legal obligation to bargain over the Compliance Decision.

18. Respondent excepts to the ALJ's failure to properly consider, as matter of fact, the Union's motivation in requesting the disputed information in order to contest Frontier's compliance determinations on an employee-by-employee basis. ALJD. 22 n. 17; Tr. 117:4-120:7, 119:3-4.

19. Respondent excepts to the ALJ's factual finding that the Union did not (a) encroach[] upon or affect[] Respondent's IRCA compliance efforts"; and that 'the Union did not dispute Respondent's obligation to comply with IRCA. . . ." ALJD at 22 n.17; Tr. 200:16-201:1, 216:6-7.

20. Respondent excepts to the ALJ's failure to properly consider, as matter of fact, that Frontier did not, and could not, maintain the individual deficiency information requested by the Union. Tr. 196:25-197:4; ALJD at 22:10-20 & nn. 16-17.

21. Respondent excepts to the ALJ's legal conclusion that "the portions of the Union's August 1 and 8 information requests that relate to the new I-9 form requirement were presumptively relevant to the Union's role as the exclusive collective-bargaining representative." ALJD at 21:7-9.

22. Respondent excepts to the ALJ's legal conclusion that "the storage location and storage method for previously completed I-9 forms [are] relevant based on the objective evidence that Respondent: (a) required employees to submit new I-9 forms in 2013 after it could not locate the I-9 forms completed for Respondent's predecessor; (b) asked 95 percent of the bargaining unit to submit another I-9 form in 2019. . . ." ALJD at 21:18-23.

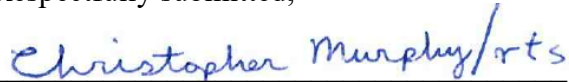
23. Respondent excepts to the ALJ's legal conclusion that "The information that the Union requested on August 8 was reasonable and relevant." ALJD at 22:11-20

24. Respondent excepts to the ALJ's legal conclusion that "By failing and refusing to provide information to the Union in response to the August 8 information request, Respondent violated Section 8(a)(5) and (1) of the Act." ALJD at 22:11-20.

25. Respondent excepts to the ALJ's proposed remedy and order. ALJD at 23:17-23:35. Respondent did not violate the Act; therefore, no remedy should be ordered. To the extent a violation is found, the proposed order is deficient in that it purports (a) to impose an overly broad intranet or internet posting obligation; and (b) to require Respondent to produce to the Union information it does not possess, to wit, "the specific deficiencies in each bargaining unit member's previously completed I-9 form". Tr. 196:18-197:17.

Dated: December 2, 2020

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on December 2, 2020, I caused a copy of the foregoing Respondent's Request for Extension of Time to File Exceptions and a Brief in Support of the Exceptions in NLRB Case No. 09-CA-247015 to be delivered to the following individuals:

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The same document was then e-filed the same day with the National Labor Relations Board, Office of the Executive Secretary in Washington, DC.



Dated: December 2, 2020

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